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Application No. 09/770,509

REMARKS

After entry of this amendment, claims 1-2, 9-10, 12-13 and 20-21 are pending in this application. Claims 3-8, 11, 14-19 and 22-51 are canceled without prejudice. Applicants reserve their right to prosecute subject matter of canceled claims in subsequent applications.

Claims 1, 2, 6, 12 and 13 have been amended to delete the phrases "substantially similar" and "a portion thereof".

Claims 1 and 12 have been amended to recite the polypeptide has the sequence of SEQ ID NO:2.

No new matter has been added by these amendments.

Claim Rejections under 35 USC § 103

Claims 1, 2, 6, 12, 13 and 17 are rejected under 35 USC § 103, as being unpatentable over Pueyo et al. (US 6,197, 300) in view of Desnottes (Trends in Biotech. 14:134-140 (1996)). The Office Action alleges it would have been obvious to modify the method of Fueyo to includ a last step of in vitro testing for effectiveness by applying the compound of step b to a microbe as taught by Desnottes.

In response, claim 1 and dependent claim 2 have been amended to recite the method of identifying compounds using an oomycete FtsZ-mt protein having the amino acid sequence of SEQ ID NO:2. The references cited do not describe the amino acid sequences of SEQ ID NO:2 nor a method using that specific sequence. Therefore, the cited references do not teach, much less suggest, all the elements of the presently claimed methods, and thus do not make obvious the present invention.

Claim Rejections under 35 USC §112, first paragraph

A. Claims 1, 2, 6, 9, 10, 12, 13, 17, 20 and 21 are rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the written description requirement. In order to more particularly point out and more specifically claim the present invention, the claims have been amended.

In response, claims 1, 2, 12 and 13 and dependent claims, have been amended to more particular point out and distinctly claim the present invention by deleting the phrasa "substantially similar" and "a portion". These amendments overcome the rejection and Applicants request its withdrawal.

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B. Claims 12, and dependent claims 13, 17, 20 and 21 are rejected under 35 USC § 112, first paragraph, as the specification allegedly does not describe the claimed method for identifying an inhibitor of FtsZ-mt activity having antimicrobial activity.

The specification as filed and antimicrobial assays known to those in the art are available to determine if an inhibitor of FtsZ-mt would have antimicrobial activity. In particular, in the specification on page 11, "Candidates for antimicrobials may be tested for efficacy in a cultivation system such as a crop system or an aquaculture system, or in a less-managed system such as of oak trees in a mixed stand." Further, on page 12, lines 21-24, an "antimicrobial" is defined as "a substance, compound or composition, whether chemical, biological, or otherwise, that is used to kill or suppress the growth or reproduction of microbes such as bacteria, molds, mildews, fungi, and oomycetes." One skilled in the art would know to test if a compound is an inhibitor if it prevents or retards the formation of the "ring" and cell division in oomycetes. Also, numerous antimicrobial assays are available that could be used to determine whether an inhibitor of FtsZ-mt is also an antimicrobial. Therefore, the specification as filed describes to those of ordinary skill in the art how to practice the invention.

C. Claims 12, and 13, 17, 20 and 21 are rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the enablement requirement. The Office Action alleges that based on the broad scope of the claims, the unpredictability in the area, the lack of sufficient guidance or working examples and the quantity of experimentation necessary, it would require undue experimentation to determine how to make and use the claimed method.

In response, the claims have been amended to more particularly recite the use of SEQ ID NO:2 for use in the claimed methods. It would not require undue experimentation to use a described protein in a screening method. The specification as filed is enabled for the claims.

D. Claims 1, 2, 6, 9, 10, 12, 13, 17 20 and 21 are rejected under 35 USC § 112, first paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter the applicant regards as the invention. The Office Action alleges that Claims 1 and 12, and those dependent thereon, are indefinite for their recitation of "substantially similarity to at least a portion". Claims 12 and 13 have been canceled making this rejection moot.

In response, Applicants have amended the claims to delete these recitations. Therefore, these amendments overcome this rejection and Applicants request its withdrawal.

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In conclusions, the above remarks and amendments place the application in form for allowance.
Please contact Mary Kakefuda at the telephone number below if you have any questions.

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Respectfully submitted,


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